IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WP(C).No. 5529 of 2005(G)

MC.443/2004 of FAMILY COURT, KANNUR
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PETITIONER:

PUTHIYAPURAYIL ABDUL SALAM,
AGED 36 YEARS, S/O. KHALID HAJI, KAKKAD P.O.,
KAKKAD, KANNUR, THROUGH HIS POWER OF ATTORNY
HOLDER SRI.K.N.KHALID HAJI.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS:
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1. P.P.MARIYUMMA, AGED 31 YEARS,
D/O. ABOOBACKER HAJI, NOUSHAD MANZIL,
NEAR THANGAL PALLY, P.O.MATTUL SOUTH, KANNUR DIST.

2. MUHAMMED SULTHAN, 11 YEARS (MINOR).

3. SHAIK, 8 YEARS, (MINOR).

4. AFARA, 4 YEARS, (MINOR),
(ALL ARE RESIDING AT NOUSHAD MANZIL, NEAR THANGAL
PALLY, MATTOOL SOUTH (REPRESENTS 2 TO 4 ARE MINORS
REPRESENTED BY THEIR MOTHER FIRST RESPONDENT).

BY ADV. SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.5529 OF 2005

APPENDIX:

EXT.P1: affidavit filed BY THE PETIITONER ALONG WITH PETITION CMP NO.1146/2004.

EXT.P2: TRUE OCPY OF THE OCMMON ORDER IN CMPS.1146/04 & 934/04 IN MC.443/03 ON THE FILE OF THE FAMILY COURT, KANNUR.

TRUE COPY

P.S.TO JUDGE

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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W.P.C.NO. 5529 OF 2005

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DATED THIS THE 11th Day of December 2006

JUDGMENT

Abdul Gafoor,J.

A petition was filed before the Family Court by the husband represented by his father, the power of attorney holder to set aside the ex parte order and to prosecute the petition representing through the power of attorney holder. The reason for dismissal of the petition is that **"the petitioner is not at all having any locus standi to file either an application to permit him to represent the counter petitioner on the strength of a power of attorney or to pray for setting aside the ex parte order passed against the counter petitioner in M.C.No.443/03".** When the party was away abroad, necessarily his duly constituted power of attorney holder can represent him for the purpose of prosecuting the case and to

seek to set aside the ex parte order. Those should have to be decided on merit. In case, the presence of the husband is required for counselling or conciliation, necessarily at that time his presence can be insisted.

2. Permission to be represented in a suit by a duly consiuted power of attorney does not disable in any manner, the court to pursue efforts for settlement of a case as provided in Section 9 of the Family Courts Act 1984. Of course, in terms of Section 13 no party shall be entitled as of right to be represented by a legal practitioner. Right to be represented by a legal practitioner in a case and to be represented to prosecute or defend a case through a power of attorney holder when the incumbent is out of India, are different. The respondent has no case that the father of her husband, the duly constituted power of attorney, is a legal practitioner. In case the petitioner/husband does not appear in person for settlement talk or conciliation, upon direction by the Family Court or fails to attend counselling on the dates notified by the counsellor, nothing prevents the court to take action against him on such default as provided in Rule 25 of the Family Courts (Kerala)

Rules 1989.

On the aforesaid reason, Ext.P2 is set aside and the Family Court is directed to consider both the applications on merit afresh on payment of Rs.25,000/- towards the maintenance accrued to the respondent within a period of one month from today. The writ petition is disposed of accordingly.

K.A.ABDUL GAFOOR
JUDGE

K.R.UDAYABHANU,
JUDGE

ks.